IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1380 OF 2006

Suresh Vithal Dhass & Ors. ...Applicants
V/s.
The State of Maharashtra. ...Respondent

Shri Shirish Gupte, Sr.Counsel with Shri V.V. Purwant for Applicants.
Shri S.V. Kotwal with Mrs.V.R. Raje and S.S. Jahdav & Co. for Orig.Complainant.
Ms.Rajeshree M. Gadhavi, APP for the State.

AND

CRIMINAL APPLICATION NO. 1492 OF 2006

Hari @ Harishchandra Balbhim Dhass. ...Applicant
V/s.
The State of Maharashtra. ...Respondent

Shri Shirish Gupte, Sr.Counsel with Shri V.V. Purwant for Applicant.
Ms.Rajeshree M. Gadhavi, APP for the State.

CORAM : V.M. KANADE, J.

DATED : APRIL 21, 2006

P.C. :-

. Heard learned Counsel for the applicants and learned APP for the State and learned Counsel for the Original Complainant.

. Both these applications can be disposed by a

common order since the applicants are seeking bail arising out of the common C.R. which was registered with Pangari Police Station, Solapur.

2. The prosecution case is that there are two political parties in the village Dhass, Pimpalgaon viz. Shiv Sena and National Congress Party. The election of the Gram Panchayat was scheduled to be held on 23rd October, 2005. The prosecution case is that Hari Dhass was threatening the complainant to cast his vote in favour of Shiv Sena. However, the complainant and his brother refused to accede to the said demand which was made by the said accused. On the date of the election i.e. on 23rd October, 2005, the alleged incident took place. According to the prosecution, all the applicants were armed with various weapons, some of them were armed with sticks, others were armed with iron rods. Applicant no.1 Suresh was armed with a sword and he assaulted Sarjerao with a sword on his chest and the other applicants assaulted the other persons from the group of the complainant and about eight persons received grievous injuries. Sarjerao died as a result

of blow which was given by applicant no.1 and others suffered injuries which are more particularly described in the Certificates which are annexed to the application.

3. Learned Counsel for the applicants submitted that the story of the prosecution which is reflected in the FIR is inconsistent and is not supported by the Medical evidence as the post mortem notes indicates that there was one wound on the chest of deceased Sarjerao and the corresponding internal injuries as a result of the said wound and there was no other injury. He submitted that therefore, the story of the complainant that all the applicants had assaulted the deceased is, therefore, false. He also submitted that in the subsequent statement, other 9 persons also were implicated. He submitted that the genesis of the said event has not been established by the prosecution since the applicants themselves had suffered injuries and these injuries has not been explained by the prosecution witnesses in their statements which were recorded. He submitted that the complainant and other persons were in

fact the assailants and there were number of cases filed against them. The deceased and the complainant had been convicted for the offence punishable under Section 302 of the IPC and their appeal was pending in the Supreme Court. The other witnesses who had given their deposition also had been convicted by the Sessions Court for an offence punishable under Sections 307, 147, 148, 149 etc. and in the High Court the said sentence had been reduced on account of the present applicants having made a statement in the High Court that they had settled the dispute between themselves. He invited my attention to the copy of the judgment of this Court in Criminal Appeal No.216/97 decided by Justice V.K. Tahilramani on 10th December, 2002 in support of the said submission. He submitted that all these matters clearly indicate that the story of the prosecution that complainant and others were attacked in order to prevent them from exercising their right of election of Panchayat, does not appear to be true. He submitted that this Court may impose any stringent conditions but may release the present applicants on bail. He did not press the application so far as applicant no.1 Suresh Vithal Dhass

is concerned, at this stage.

4. Learned APP has filed an affidavit-in-reply and has also submitted the chargesheet showing the number of injuries which are found on the person of the other witnesses and the antecedents of the some of the applicants. It is submitted that the recovery has been made from accused no.1 of the weapons that have been used in the said offence.

5. Shri Kotwal, learned Counsel appearing on behalf of the complainant submitted that injuries which were inflicted on the other persons were grievous injuries and those injuries were on vital parts such as a head and chest. As many as eight persons had suffered fractures in the said assault. He submitted that the fact clearly indicated that this was a pre-planned act as the complainant and members of his group were assaulted at three different places. He invited my attention to the injury certificates which are annexed to the application.

6. Shri Gupte, learned Counsel appearing on behalf of the applicant in Criminal Application No.1492/2006 submitted that the said applicant is physically handicapped person and he was suffering from acute cervical disk and was also suffering from various diseases. He invited my attention to the Certificates which were issued by the doctor in support of the said submission. He submitted that therefore, it was not probable that such handicapped person could have taken any part in the commission of the said offence. Learned APP, on the other hand, however, submitted that there is one case pending against the said applicant under Section 307 of the IPC.

7. Considering the submissions made by both the learned Counsel for the applicants and the complainant and learned APP for the State, in my view, this is not a fit case for grant of bail. The allegations disclose that one person died in the said assault and eight persons were grievously injured. It is alleged that the applicants were trying to prevent the complainant and the members of the group who were trying to exercise

their right to vote. It thus appear that there was previous enmity between the group. It is not relevant at this stage to consider what was the motive of the applicants in assaulting the deceased and others. The fact remains that there is sufficient material on record to indicate the involvement of the present applicants in the commission of the said offence. In my view, therefore, if the applicants are released on bail, there is every possibility either there will be breach of peace between the two groups or they may be retaliation from the complainant and his group or the present applicants may try to tamper with the evidence or threaten the witnesses.

8. Both the applications, therefore, are rejected. The trial, however, is expedited. The Sessions Court is directed to decide the Sessions Case, as expeditiously as possible.

9. I am informed that the matter is already kept for framing of charge. The trial Court may try to decide the case within a period of eight months.

Liberty is granted to the applicants to apply for bail if the trial is not over within a period of eight months.

10. The trial Court shall not be influenced by any observations made by this Court while deciding the application and the same shall not be construed as an expression of opinion on merits of the case.

11. These observations are made only for the purpose of taking into consideration the rival contention which were canvassed by both the learned Counsel and other side.

(V.M. Kanade, J.)